

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3612 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KASHAMSHA HUSENSHA FAKIR

Versus

VIRAMGAM TEXTILE MILLS LTD. & ANR.

Appearance:

MS SK VISHEN for the Petitioner
MR KAUSHAL THAKER for Respondent No. 1
None present for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 31/08/96

ORAL JUDGEMENT

1. Heard learned counsel for the parties. The petitioner was a permanent workman of the respondent no.1 mill. He was working in the Engineering Department as a Tin man in the said mill. In the year 1953, the said mill was closed due to its economical reasons. In the year 1957, it was restarted as Prabha Mill and the petitioner joined as a Tin man in Engineering Department.

He continued to work till 1967 and with some break upto the year 1969. The mill suddenly stopped its production. The petitioner was not dismissed, removed or retrenched from the services. In the year 1972, the Sick Textile Undertaking (taking over management) Act, 1972 has been promulgated and custodian took over the possession of the mill, but he could not start the production. In the year 1974, the mill was taken over by National Textile Corporation. The petitioner was taken back in the service on 29th April, 1974. On 16th October, 1980, three months notice was given to the petitioner by respondent no.1 to retire from the services and from 16th January, 1981 he retired from the services. Despite of having long service, the petitioner was given a cheque of Rs.2860-29 towards the payment of gratuity. Hence he has taken this matter before the authority under the Payment of Gratuity Act, 1972. The controlling authority after hearing the parties under its order dated 19th August, 1981 ordered for the payment of Rs.111-30 more to the petitioner towards the amount of gratuity. The petitioner filed an appeal, but the said appeal was dismissed without hearing the petitioner. Hence, this Special Civil Application before this Court.

2. The dispute relates to the period earlier to 1-7-1974. The petitioner was not paid anything towards the gratuity for the services which he rendered to the mill earlier to 1-7-1974. The authority has decided that the National Textile Corporation has taken the factory from 1-7-1974 and from the said date only it has to make the payment of gratuity and not for the period earlier when the petitioner served the factory.

2. The counsel for the petitioner contended that this approach of the controlling authority was altogether erroneous. The matter is no more res integra. This Court in Special Civil Application No.3056 of 1979 decided on 22nd September, 1983 held that it may be considered to be a case where the company had ceased to work since 1969, but it cannot be said to be a case where the petitioner has been retrenched after paying the compensation as provided in section 25 FFF of the Industrial Disputes Act, 1947. The approach of the controlling authority that the petitioner was not in service on 1-7-1974 is erroneous. There is nothing on the record to show that the petitioner has been retrenched from the services. It was only a case where the mill ceased to work in the year 1969. The petitioner made a specific statement before this Court that his services were not terminated in the year 1967 or 1969. After this company was taken over by the National Textile

Corporation the petitioner was called back in the service. So it is a case where the petitioner should be taken to be in continuous service and the gratuity is to be paid accordingly.

3. In the result, this Special Civil Application is allowed and it is hereby declared that the petitioner shall be entitled for the gratuity by treating him in the continuous service from the date he entered in the service of the mill which has been taken over by the National Textile Corporation Limited. In the result, this Special Civil Application succeeds as aforesaid and the same is allowed. Rule is made absolute in the aforesaid terms with no order as to costs.

4. It is expected of the respondent no.1 to calculate the amount of gratuity payable to the petitioner in accordance with this order within a period of three months from the date of receipt of certified copy of this order and the amount shall be paid to the petitioner within two months next. No order as to costs.

zgs/-